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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44191
)	
v.)	ADA COUNTY NO. CR 2015-520
)	
JAMES DARNELL BLACK,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

**HONORABLE MELISSA MOODY
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Mr. Black contends the district court abused its discretion when it denied his motion pursuant to Idaho Code § 19-2522 for a psychological evaluation and that it abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

Mr. Black included a statement of facts and course of proceedings in his opening brief. (App. Br., pp.1-3.) He incorporates that statement herein by reference.

ISSUES

1. Did the district court abuse its discretion when it denied Mr. Black's motion for a psychological evaluation pursuant to Idaho Code § 19-2522?
2. Did the district court abuse its discretion when it imposed upon Mr. Black a sentence of five years fixed?

ARGUMENT

I.

The District Court Abused Its Discretion When It Denied Mr. Black's Motion For A Psychological Evaluation Pursuant To Idaho Code § 19-2522

In his opening brief, Mr. Black argued the district court abused its discretion in denying his motion for a psychological evaluation because his mental condition should have been a significant factor at sentencing and the district court did not have adequate information about his mental condition without the requested evaluation. (App. Br., p.6.) The State argues in its brief that the district court properly exercised its discretion in denying Mr. Black's motion because it found there was no reason to believe Mr. Black's mental condition would be a significant factor at sentencing and good cause had not been shown. (Resp. Br., p.4.) The State does not address or attempt to distinguish *State v. Coonts*, 137 Idaho 150 (Ct. App. 2002), which Mr. Black cited in his opening brief, see App. Br., pp.6-8, and which is directly on point.

In *State v. Coonts*, the defendant pled guilty to trafficking in marijuana and delivery of marijuana. 137 Idaho at 150. At the outset of the sentencing hearing, his attorney orally requested an order for a psychological evaluation pursuant to Idaho Code § 19-2522. *Id.* at 150, 153. The district court denied the request and proceeded to sentence the defendant to a term less than the maximum. *Id.* at 150. On appeal, the defendant challenged the district court's refusal to order a psychological evaluation and the district court vacated the sentence and remanded the case for resentencing upon receipt of a psychological evaluation report. *Id.* at 153. The Court of Appeals concluded there was a compelling need for a psychological evaluation based, in part, upon the defendant's report of his mental condition to the presentence investigator. *Id.*

at 152-53. The Court explained the trial court knew the defendant suffered from a serious mental illness, specifically, manic depression, and “[a] psychological evaluation could have provided useful illumination for the evaluation of [the defendant’s] level of culpability and for formulation of a sentence that would be appropriate to meet the goals of sentencing.” *Id.* at 152-53.

Here, like in *Coonts*, the district court was aware prior to sentencing that Mr. Black suffered from a serious mental illness. The district court stated that, in denying Mr. Black’s motion for a psychological evaluation, it “read everything and considered everything that Mr. Black has sent, and also the PSI materials.” (4/15/16 Tr., p.25, Ls.17-19.) The presentence investigation report reflects that Mr. Black was classified as mildly mentally retarded and suffered from serious depression with frequent suicidal ideation. (PSI, p.21.) The report also reflects Mr. Black began seeing a psychiatrist at a young age because of auditory hallucinations. (PSI, p.22.) The GAIN-I assessment reflects clinical diagnoses of bipolar disorder, generalized anxiety disorder, major depressive disorder, and ADHD, among other things. (PSI, pp.67, 71.) The mental examination report included with the presentence materials indicates a “serious mental illness (SMI) may be present.” (PSI, p.77.)

Like in *Coonts*, a psychological evaluation could have provided useful illumination for the evaluation of Mr. Black’s level of culpability and for formulation of a sentence—perhaps less than the maximum—that would meet the goals of sentencing. See *Coonts*, 137 Idaho at 152-53; see also *See State v. Windom*, 150 Idaho 873, 885 (2011) (“As a general matter, defendants with diminished capacity are less blameworthy than people who are cognitively intact.”); *State v. Card*, 121 Idaho 425, 439 (1991) (“It is

clear that a mental defect may diminish an individual's culpability for a criminal act.") Mr. Black was convicted of criminal possession of a financial transaction card which he used to purchase a Greyhound bus ticket for \$261.20. (PSI, p.4.). He was under the influence of crack cocaine at the time, and has been addicted to crack cocaine for over twenty years. (PSI, pp.6.) It is certainly possible that Mr. Black's mental health could have reduced his culpability and played a role in determining an appropriate sentence.

The State appears to contend that Mr. Black was seeking "duplicative mental health evaluations" which were "unwarranted" because of Mr. Black's crimes "and lengthy criminal history." (Resp. Br., p.5.) It is unclear why Mr. Black's crimes and lengthy criminal history would make his mental health irrelevant. In any case, he was not seeking a duplicative evaluation. The presentence investigation report and GAIN-I assessment were based entirely on Mr. Black's self-report of his mental health condition. (PSI, pp.21-22, 71.) Mr. Black sought a psychological evaluation pursuant to Idaho Code § 19-2522(1) to obtain a professional evaluation of his mental health and the district court abused its discretion in denying Mr. Black's motion.

II.

The District Court Abused Its Discretion When It Imposed Upon Mr. Black A Sentence Of Five Years Fixed

In his opening brief, Mr. Black argued the district court abused its discretion at sentencing because a sentence of five years fixed was not reasonable considering the nature of Mr. Black's offense, his character, and the protection of the public interest. (App. Br., pp.10-12.) Mr. Black noted it was difficult for him to challenge the basis for the district court's sentencing decision because the court gave absolutely no explanation for its sentence. (App. Br., pp.9-10.)

In its brief, the State asserts the district court "gave the parties its notes on sentencing" and the district court explained its sentence in its order denying Mr. Black's Rule 35 motion. (Resp. Br., p.8.) The record does not support the State's position. At a hearing on April 1, 2016, the district court gave the parties its notes about Mr. Black's criminal history, which were included in the presentence investigation materials. (R., p.196; PSI, pp.166-68.) These notes do not in and of themselves explain the district court's sentencing decision. Among other things, these notes make no mention of Mr. Black's mental condition, which "is simply one of the factors that must be considered and weighed by the court at sentencing." *State v. Strand*, 137 Idaho 457, 461 (2002). Mr. Black acknowledges the district court explained its sentencing decision in its order denying Mr. Black's Rule 35 motion, see R., pp.258-63, but Mr. Black does not challenge on appeal the district court's order denying his Rule 35 motion. He contends the district court's post-hoc explanation of its sentence should not be accepted without due consideration by this Court.

The State also asserts in its brief that an independent review of the record “clearly demonstrates” the sentence imposed upon Mr. Black was appropriate. (Resp. Br., pp.8-9.) An independent review of the record, which is a fundamental part of this Court’s sentencing review, is not nearly so clear. See *State v. Williams*, 151 Idaho 828, 834 (2011) (“When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, having regard to the nature of the offense, the character of the offender and the protection of the public interest.”) (quotation marks and citation omitted). Mr. Black certainly has a lengthy criminal history, but he has no history of violence and presents no risk of violence. (PSI, pp.6-16, 26; see also PSI, pp.169-72.) Mr. Black also suffers from serious mental illnesses, which the record does not reflect were considered at all by the district court. This fact alone should result in resentencing. See *State v. Miller*, 151 Idaho 828, 836-37 (2011); see also I.C. § 19 2523. With respect to the other factors to be considered as part of this Court’s independent review, Mr. Black relies on the argument contained in his opening brief. (App. Br., pp.10-12.)

CONCLUSION

For the reasons stated above as well as those set forth in his opening brief, Mr. Black respectfully requests that this Court vacate his sentence and remand this case to the district court with instructions to grant his motion for a psychological evaluation and, after that evaluation is completed, conduct a new sentencing hearing before a different district court judge. Alternatively, Mr. Black requests that this Court reduce his sentence to a unified term of five years, with 18 months fixed.

DATED this 3rd day of January, 2017.

_____/S/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of January, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/S/_____
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AWR/mc